

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS SHIMMEL,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 1:21-cv-358

Hon. Hala Y. Jarbou

ORDER

On January 26, 2022, Magistrate Judge Ray Kent issued a Report and Recommendation (R&R) recommending that Defendants' motion to dismiss (ECF No. 30) be granted without prejudice as to Count I (the § 1983 claims against the 15 individual defendants) and be granted with prejudice as to Count II (the ADA claim against the MDOC) and Count III (the Rehabilitation Act claim against the MDOC), and that Defendants' motion for summary judgment (ECF No. 30) be denied without prejudice. (ECF No. 35.) The R&R was duly served on the parties. No objections have been filed, and the deadline for doing so expired on February 9, 2022. On review, the Court concludes that the R&R correctly analyzes the issues and makes a sound recommendation.

Accordingly,

IT IS ORDERED that the R&R (ECF No. 35) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' motion to dismiss (ECF No. 30) is **GRANTED without prejudice** as to Count I and **GRANTED with prejudice** as to Counts II and III.

IT IS FURTHER ORDERED that Count I is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that Counts II and III are **DISMISSED** with prejudice.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (ECF No. 30) is **DENIED without prejudice**.

IT IS FURTHER ORDERED that, within fourteen (14) days of the date of this order, Plaintiff may file an amended complaint to address the deficiencies in Count I. If no amended complaint is filed within fourteen (14) days, a judgment will enter in accordance with this Order.

Date: February 15, 2022

/s/ Hala Y. Jarbou
HALA Y. JARBOU
UNITED STATES DISTRICT JUDGE